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OFFICE OF PETITIONS

In re Application of	:	
Allibhoy et al.	:	
Application No. 09/635,735	:	DECISION ON PETITION
Filed: 08/09/2000	:	
Attorney Docket No. PU050095	:	

This is a decision on the petition filed April 7, 2006, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to respond to the final Office action of May 23, 2005, which set a three (3) month shortened statutory period for reply. In the absence of a timely filed reply, the Office mailed a Notice of Abandonment on January 9, 2006.

Petitioners asserted that they submitted a timely reply to the final Office action accompanied by an extension of time for response within the third month (and fee), and certificate of mailing dated November 23, 2005. With the present petition, petitioners submitted a copy of the previously mailed reply in the form of a Notice of Appeal, an extension of time for response within the third month, both bearing a certificate of mailing dated November 23, 2005, and a return postcard receipt with a USPTO date-stamp of November 28, 2005. The certificate of mailing of November 23, 2005, would have rendered the reply, including the extension of time for response, timely filed if received in the USPTO. Unfortunately, the application file does not include the original Notice of Appeal or the extension of time for response, bearing a certificate of mailing dated November 23, 2005.

Pursuant to 37 CFR 1.8(b):

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time

has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The present petition satisfies the requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to file a timely reply to the final Office action of May 23, 2005, is withdrawn and the application is restored to pending status. The Office will accept the copy of the Notice of Appeal and the extension of time for response within the third month submitted with the petition in place of the reply mailed on November 28, 2005 (certificate of mailing dated November 23, 2005). Additionally, the Office acknowledges receipt of the Appeal Brief, the extension of time for response within the third month, and the requisite fees submitted on May 8, 2006 (certificate of mailing dated April 28, 2006).

This matter is being referred to Technology Center AU 3621.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3211. All other questions regarding the status of the application or the examination process should be directed to the Technology Center.



Christina Tartera Donnell
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Office of Petitions